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Nos. 623-625

In the Supreme Court of the United States

OCTOBER TERM, 1942

OKLAHOMA TAX COMMISSION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The district court wrote no opinion. The opinion of the circuit court of appeals is not yet reported but may be found in the record at pp. 151–159.

JURISDICTION

The judgments of the circuit court of appeals sought to be reviewed were entered November 13, 1942 (R. 160–161). The petition for writs of certiorari was filed January 5, 1942. The jurisdiction of this Court is invoked under section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether restricted property of deceased allottees of the Five Civilized Tribes is subject to Oklahoma inheritance taxes.

STATEMENT

These were three actions brought by the United States to recover inheritance taxes imposed by the petitioner Oklahoma Tax Commission upon the transfer of the estates of three deceased members of the Five Civilized Tribes and paid under protest by the Secretary of the Interior. In each case, the district court made findings of fact and conclusions of law and entered judgment for petitioner (R. 36–42, 90–96, 140–147). The circuit court of appeals reversed (R. 151–157, 160–161).

The pertinent facts, as found by the district court, are as follows:

No. 623. Lucy Bemore, a full-blood Seminole, died intestate December 23, 1932 (R. 36). Petitioner assessed an inheritance tax of $5,925.20 upon transfer of her estate (R. 38). The assessment was pursuant to c. 162, Okla. S. L. 1915, as amended by c. 112, Okla. S. L. 1927, which provides that:

> A tax is hereby laid upon the transfer to persons * * * of property * * *.
>
> When the transfer is of tangible property in this state made by any person, or

> of intangible property made by a resident of this state at time of transfer:
>
> First: By will or the intestate laws of this state; * * *.

Included in the estate was the following restricted property: Decedent's homestead and surplus allotments, and bonds and cash (held by the Secretary of the Interior) representing proceeds from sales of oil and gas produced from the allotted lands. The estate included also other lands purchased for decedent out of restricted funds and held under a restricted form of deed (R. 37). The property was inherited in equal parts by her husband and son (R. 36). Her death freed from restriction the property passing to the husband (R. 38).

No. 624. Nitey, a full-blood Seminole, died testate August 17, 1930 (R. 90). Petitioner assessed an inheritance tax of $16,053.74 under authority of c. 162, Okla. S. L. 1915, as amended (R. 92). Included in the estate was the following restricted property: Decedent's homestead and surplus allotments, and bonds and cash (held by the Secretary of the Interior) representing proceeds from the sale of oil and gas produced from the allotted lands. The estate also included household goods and a truck (R. 91). Decedent's will devised the property in equal shares to her five children, full-blood Seminoles (R. 90). The restrictions were not removed by her death (R. 92).

No. 625. Wosey Deere, a full-blood Creek, died intestate September 2, 1938 (R. 141). Petitioner assessed an inheritance tax of $14,908.67 (R. 143) pursuant to c. 66, Art. 5, Okla. S. L. 1935, which provides that:

> A tax is hereby levied upon the transfer of the net estate of every decedent * * * to persons * * * of property, real, personal or mixed, whether tangible or intangible, or any interest therein * * * by will or the intestate laws of this state * * *.

Included in the estate was the following restricted property: Decedent's homestead and surplus allotments, an inherited allotment, and bonds and cash (held by the Secretary of the Interior) representing proceeds from the sale of oil and gas produced from the inherited allotment. The estate included also an interest in other lands, a judgment, miscellaneous items and life insurance (R. 141–142). Decedent's heirs were her husband and three children (R. 141). The restrictions were not removed by her death (R. 143).

ARGUMENT

Petitioner contends (Pet. 14–19) that since the laws of Oklahoma determine who are to be the distributees of the restricted property of deceased Indians of the Five Civilized Tribes, distribution in accordance with those laws may be taxed by that State. The argument, however, assumes that

because the channels of distribution on death are defined by the laws of Oklahoma such distribution is a privilege accorded by the State and can therefore be taxed. This argument confuses the authority to prescribe standards in accordance with which property is to be distributed with the authority to permit the distribution. It is true that the property here in question passes in accordance with the provisions of the Oklahoma laws of descent. But it is only true because Congress has so provided. *Jefferson* v. *Fink*, 247 U. S. 288; *Blundell* v. *Wallace*, 267 U. S. 373; *Jackson* v. *Harris*, 43 F. (2d) 513 (C. C. A. 10); *Dunn* v. *Micco*, 106 F. (2d) 356 (C. C. A. 10). The privilege of transferring property on death is one conferred on the Indians by Congress, even though in prescribing the manner of its exercise Congress has adopted the standards of Oklahoma. Federal laws rather than the laws of Oklahoma, therefore, constitute the ultimate authority under which allottees are permitted to transmit and their heirs to receive restricted property, although in determining how the property is to be transmitted Congress "adopted the provisions of the Oklahoma Statute as an expression of its own will—the laws of Missouri or Kansas, or any other State might have been accepted. The lands really passed under a law of the United States, and not by Oklahoma's permission." *Childers* v. *Beaver*, 270 U. S. 555, 559; *In re Estate of Nah-me-tsa-he*, 119 Okla. 300.

Contrary to petitioner's contention (Pet. 20–25), *Childers* v. *Beaver, supra,* cannot be distinguished on the ground that it involved the Act of June 25, 1910, 36 Stat. 855–856, as amended February 14, 1913, 37 Stat. 678, which is inapplicable to Indians of the Five Civilized Tribes. So far as the question here involved is concerned, the status of the restricted property of Quapaw Indians (involved in *Childers* v. *Beaver*) and that of Indians of the Five Civilized Tribes has always been substantially the same. The United States has controlling authority over both, and the same legislation has made the Oklahoma laws of descent applicable to both.[1] The 1910 Act, as amended, only meant that as to Quapaw property Congress

[1] Congress made the local laws of descent applicable to the Quapaw Tribe and the Five Civilized Tribes as follows: Section 2 of the Act of April 28, 1904, 33 Stat. 573, provided that the statutes of Arkansas theretofore put into force in the Indian Territory (including chapter 49 of Mansfield's Digest relating to descent and distribution) should be taken "to embrace all persons and estates in said Territory, whether Indian, freedmen, or otherwise". The Oklahoma Enabling Act of June 16, 1906, 34 Stat. 267, provided (sec. 13) that "the laws in force in the Territory of Oklahoma, as far as applicable, should extend over and apply to said State until changed by the legislature thereof", and (sec. 21) that "all laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State, except as modified or changed by this Act or by the constitution of the State," thus substituting the Oklahoma law of descent for that of Arkansas formerly in force in the Indian Territory.

so modified existing legislation as to authorize the Secretary of the Interior, rather than the courts of Oklahoma, to determine in accordance with State law who shall be distributees on death and to control the making of wills.[2] The fact that Congress has enacted no similar provision with respect to Five Civilized Tribes restricted property in no way alters the basic consideration that as to both Quapaw and Five Civilized Tribes restricted property the United States and not Oklahoma is the ultimate source of authority for the privilege of testamentary and intestate disposition of restricted property.

Petitioner's assertion (Pet. 23–25) that these tax cases should be regarded in the light of *Blundell* v. *Wallace*, 267 U. S. 373, rather than *Blanset* v. *Cardin*, 256 U. S. 319, is of no avail, for both cases show that the United States controls the restricted property of its Indian wards through its laws. The difference between the cases is simply that in the *Blundell* case Congress had provided that Indians of the Five Civilized Tribes might devise their restricted property in accordance with local laws, whereas in the *Blanset* case it had provided

[2] Consistently with its adoption of the Oklahoma pattern of distribution for the Five Civilized Tribes, Congress authorized the Oklahoma probate courts to supervise the administration of the distribution as prescribed by those laws. In exercising this function, however, the probate courts act as federal agencies. See, e. g., *Parker* v. *Richard*, 250 U. S. 235; *In re Jessie's Heirs*, 259 Fed. 694 (E. D. Okla.); *In re Fulsom's Estate*, 141 Okla. 300.

that Quapaw Indians might make wills in accordance with regulations made by the Secretary of the Interior.

Finally, since the transfer by death of the restricted property here involved took place by permission of the United States, and not Oklahoma, and therefore that State had no right to impose the taxes in question, it is not material, contrary to petitioner (Pet. 26–28), whether or not those taxes constitute a direct burden on a governmental instrumentality.

CONCLUSION

The decision of the circuit court of appeals is in accord with *Childers* v. *Beaver*, 270 U. S. 555. It is therefore respectfully submitted that the petition should be denied.

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